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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,789	03/01/2004	Roy Martinez	135/01	9425

7590

08/25/2004

Averill & Varn
8244 Painter Ave.
Whittier, CA 90602

EXAMINER

TRAN, DIEM T

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/789,789	Applicant(s) MARTINEZ, ROY	
	Examiner Diem Tran	Art Unit 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) 17 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

-On page 8, line 1, "a inlet adapter" should be changed to --an inlet adapter--.

Appropriate correction is required.

Claim Objections

Claim 18 is objected to because of the following informalities:

-The dependency of claim 18 should be changed to --claim 17--, because the use of "the reliefs" in claim 18 is mentioned in claim 17 not in claim 14. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wright (US Patent 1,797,310).

Wright discloses an exhaust extracting device comprising:

an outer tube having an inlet (3), an inlet adapter portion (2), an increased diameter center portion, an outlet adapter portion, an outlet (4), and a central axis; an inner tube substantially co-axial with said outer tube, the inner tube having an outer surface; helically oriented vanes

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extending outward from the outer surface of the inner tube (see Figure 1); at least two supports extending between the inner tube and the outer tube, wherein the supports are substantially orthogonal to the outer surface of the inner tube, and have a fanblade like orientation, wherein the vanes and supports cooperate to cause an outer air flow between the inner tube and the outer tube to rotate (see Figures 1, 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (US Patent 1,797,310).

Regarding claims 2-16, Wright discloses all the claimed limitations as discussed in claim 1 above, however, fails to disclose that the inlet and outlet adapter portion is between 4 –6 inches long; the inner tube entrance and inner tube exit reside at approximately 0 to 75% or 33% of the distance between the inlet adapter entrance and exit, and between the outlet adapter entrance and exit, respectively; diameter of the center portion of the outer tube is approximately 2.5- 5 inches; the extending length of the vanes is between 3/16 –1/4 inches; the number of inlet and outlet supports to the inner tube are between 3-10 supports, the angles between of inlet supports is approximately 35-55 degrees from the central axis; the spacing between vanes is between 1/2-1 inch.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a specific optimum range of the length of the inlet and outlet adapter portion; the relative position of the inner tube entrance and inner tube exit in relation with the distance between the inlet adapter entrance and exit, and between the outlet adapter entrance and exit, respectively; the diameter of the center portion of the outer tube, the extending length of vanes; the number of inlet and outlet supports to the inner tube entrance and inner tube exit, the angles between of inlet supports, the spacing between vanes, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

Regarding claims 19, 20, Wright discloses an exhaust extracting device comprising:
an outer tube having an inlet (3), an inlet and an outlet adapter portion, an increased diameter center portion, an outlet (4), and a central axis; an inner tube substantially co-axial with said outer tube, the inner tube having an outer surface; helically oriented vanes extending outward from the outer surface of the inner tube (see Figure 1); at least two supports extending between the inner tube and the outer tube, wherein the supports are substantially orthogonal to the outer surface of the inner tube, and have a fanblade like orientation, wherein the vanes and supports cooperate to cause an outer air flow between the inner tube and the outer tube to rotate (see Figures 1, 2); however, fails to disclose the length of the inlet and outlet adapter portion being between approximately 4-6 inches long; the extending of vanes being between 3/16 and 1/4 inches; the number of inlet and outlet supports to the inner tube entrance and exit being 3-10 supports, and the position of the inner tube entrance and inner tube exit being 0 to 75% in

relation with the distance between the inlet adapter entrance and exit, and between the outlet adapter entrance and exit, respectively.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a specific optimum range of the length of the inlet and outlet adapter portion, the extending length of vanes; and the number of inlet supports to the inner tube, and the relative position of the inner tube entrance and inner tube exit in relation with the distance between the inlet adapter entrance and exit, and between the outlet adapter entrance and exit, respectively, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

Claims 17, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Examiner Diem Tran whose telephone number is (703) 308-6073. The examiner can normally be reached on Monday -Friday from 8:30 a.m.- 5:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reached on (703) 308-2623. The fax number for this group is (703) 872-9306.

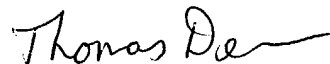
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



Diem Tran
Patent Examiner
Art unit 3748

DT
August 19, 2004



THOMAS DENION
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700